

1 Paul A. Levin – State Bar No. 229077
plevin@themrlg.com
2 MORTGAGE RECOVERY LAW GROUP LLP
700 North Brand Boulevard, Suite 830
3 Glendale, California 91203
Telephone: (818) 630-7900 / Fax: (818) 630-7920

4 Etan Mark (*admitted pro hac vice*)
5 etan@markmigdal.com
6 Donald J. Hayden (*admitted pro hac vice*)
7 don@markmigdal.com
8 MARK MIGDAL & HAYDEN
80 SW 8th Street, Suite 1999
Miami, Florida 33130
Telephone: (305) 374-0440

9 Jason M. Jones (*admitted pro hac vice*)
jason@jonesatlaw.com
10 JASON JONES ATTORNEY AT LAW
1147 Hunter Avenue
Columbus, OH 43201
Telephone: (312) 237-0275

12 || Attorneys for Plaintiffs

13 | Mark T. Drooks – State Bar No. 123561
14 | mdrooks@birdmarella.com

15 Paul S. Chan – State Bar No. 183406
pchan@birdmarella.com

Gopi K. Panchapakesan – State Bar No. 279586
gpanchapakesan@birdmarella.com

17 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.
18 1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
19 Telephone: (310) 201-2100
Facsimile: (310) 201-2110

20 Attorneys for Defendant Herbalife
International of America, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

23 MICHAEL LAVIGNE, *et al.*,
24
25 Plaintiffs,
26
27 vs.
28

CASE NO. 2:18-cv-07480-JAK (MRWx)

STIPULATED PROTECTIVE ORDER

Magistrate Judge Michael R. Wilner

1 HERBALIFE LTD., *et al.*,

2 Defendants.

3

4 1. INTRODUCTION

5 1.1 PURPOSES AND LIMITATIONS

6 Discovery in this action is likely to involve production of confidential,
7 proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may
9 be warranted. Accordingly, Plaintiffs and Defendants Herbalife Nutrition Ltd. (fka
10 Herbalife Ltd.), Herbalife International, Inc., and Herbalife International of
11 America, Inc. (collectively, “Herbalife”) hereby stipulate to and petition the Court to
12 enter the following Stipulated Protective Order. The parties acknowledge that this
13 Order does not confer blanket protections on all disclosures or responses to
14 discovery and that the protection it affords from public disclosure and use extends
15 only to the limited information or items that are entitled to confidential treatment
16 under the applicable legal principles. The parties further acknowledge, as set forth
17 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
18 file confidential information under seal; Civil Local Rule 79-5 sets forth the
19 procedures that must be followed and the standards that will be applied when a party
20 seeks permission from the court to file material under seal.

21 1.2 GOOD CAUSE STATEMENT

22 This putative class action involves claims arising out of Plaintiffs’ attendance
23 at Herbalife events and alleged misrepresentations about the nature of Herbalife’s
24 business opportunity made at those events. Plaintiffs have propounded discovery
25 requests that seek, among other things, video and audio recordings of Herbalife
26 events, minutes from meetings of Herbalife’s Board of Directors regarding events,
27 fees paid to Herbalife distributors to speak at events, documents reflecting event
28 attendance records, documents reflecting membership in certain business

1 committees, tax and bank account information, and communications discussing
2 Herbalife's events. Notwithstanding Herbalife's objections to the production of
3 much of this material, Herbalife asserts that such materials consist of, among other
4 things, information regarding confidential business strategies and policies; sensitive
5 financial information; information implicating the privacy rights of third parties;
6 and/or information which may be privileged or otherwise protected from disclosure
7 under state or federal statutes, court rules, case decisions, or common law. Nothing
8 in this Good Cause Statement or Stipulated Protective Order shall be construed as an
9 agreement by Plaintiffs that any specific documents or categories of documents are
10 properly considered "Confidential Information" as defined herein.

11 It is the intent of the parties that information will not be designated as
12 confidential for tactical reasons and that nothing be so designated without a good
13 faith belief that it has been maintained in a confidential, non-public manner. It also
14 is the intent of the parties that information will not be designated as confidential
15 unless there is good cause as to why such information should not be part of the
16 public record of this case.

17 Further, there are potentially certain highly sensitive materials that implicate
18 the privacy interests of third parties, including compensation and disciplinary
19 records pertaining to those third parties. Pursuant to the Court's November 18, 2019
20 and November 26, 2019 Orders (Dkts. 203, 206), these materials are
21 "presumptively" considered to be "Attorneys' Eyes Only" under this Protective
22 Order.¹

23
24
25 ¹ See Dkt. 203 at ¶ 22 ("The parties are directed to immediately meet to discuss
26 adopting a new protective order with an 'attorneys' eyes only' component. These
27 records will presumptively fall into that."); Dkt. 206 at ¶ 2 ("The compensation and
28 discipline information . . . warrants a presumptively increased level of
confidentiality to be monitored and enforced through the entry of a revised
protective order.")

1 2. DEFINITIONS

2 2.1 Action: The above-captioned action styled as *Michael Lavigne, et al. v. Herbalife Ltd.*, Case No. 2:18-cv-07480-JAK (C.D. Cal.).

4 2.2 Challenging Party: A Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: Information
7 (regardless of how it is generated, stored or maintained) or tangible things that
8 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
9 above in the Good Cause Statement.

10 2.4 “ATTORNEYS’ EYES ONLY” Information or Items:
11 Information (regardless of how it is generated, stored or maintained) or tangible
12 things that qualify for heightened protection under Federal Rule of Civil Procedure
13 26(c), and as specified above in the Good Cause Statement.

14 2.5 Counsel: Outside Counsel of Record and House Counsel (as
15 well as their support staff).

16 2.6 Designating Party: A Party or Non-Party that designates
17 information or items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

19 2.7 Disclosure or Discovery Material: All items or information,
20 regardless of the medium or manner in which it is generated, stored, or maintained
21 (including, among other things, testimony, transcripts, and tangible things), that are
22 produced or generated in disclosures or responses to discovery in this matter.

23 2.8 Expert: A person with specialized knowledge or experience in a
24 matter pertinent to the litigation who has been retained by a Party or its counsel to
25 serve as an expert witness or as a consultant in this Action.

26 2.9 House Counsel: Attorneys who are employees of a party to this
27 Action. House Counsel does not include Outside Counsel of Record or any other
28 outside counsel.

1 2.10 Non-Party: Any natural person, partnership, corporation,
2 association, or other legal entity not named as a Party to this action.

3 2.11 Outside Counsel of Record: Attorneys who are not employees of
4 a party to this Action but are retained to represent or advise a party to this Action
5 and have appeared in this Action on behalf of that party or are affiliated with a law
6 firm which has appeared on behalf of that party, and includes support staff.

7 2.12 Party: Any party to this Action, including all of its officers,
8 directors, employees, consultants, retained experts, and Outside Counsel of Record
9 (and their support staffs).

10 2.13 Producing Party: A Party or Non-Party that produces Disclosure
11 or Discovery Material in this Action.

12 2.14 Professional Vendors: Persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.15 Protected Material: Any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

18 2.16 Receiving Party: A Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.

26 Any use of Protected Material at trial will be governed by the orders of the
27 trial judge. This Order does not govern the use of Protected Material at trial.
28

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order will remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition will be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for
12 Protection: Each Party or Non-Party that designates information or items for
13 protection under this Order must take care to limit any such designation to specific
14 material that qualifies under the appropriate standards. The Designating Party must
15 designate for protection only those parts of material, documents, items, or oral or
16 written communications that qualify so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (*e.g.*, to unnecessarily encumber the case development process or to impose
22 unnecessary expenses and burdens on other parties) may expose the Designating
23 Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

27 5.2 Manner and Timing of Designations. Except as otherwise
28 provided in this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as

1 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
2 protection under this Order must be clearly so designated before the material is
3 disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (*e.g.*, paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix at a minimum, the legend
8 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
9 contains protected material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (*e.g.*, by making appropriate markings in the margins).

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and
15 before the designation, all of the material made available for inspection will be
16 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
17 documents it wants copied and produced, the Producing Party must determine which
18 documents, or portions thereof, qualify for protection under this Order. Then, before
19 producing the specified documents, the Producing Party must affix the
20 “CONFIDENTIAL legend” (or “ATTORNEYS’ EYES ONLY” if applicable) to
21 each page that contains Protected Material.

22 If only a portion or portions of the material on a page qualifies for protection,
23 the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by
24 making appropriate markings in the margins).

25 (b) for testimony given in depositions that the Designating Party identify
26 the Disclosure or Discovery Material on the record, before the close of the
27 deposition all protected testimony.

28 (c) for information produced in some form other than documentary and for

1 any other tangible items, that the Producing Party affix in a prominent place on the
2 exterior of the container or containers in which the information is stored the legend
3 “CONFIDENTIAL” (or “ATTORNEYS’ EYES ONLY if applicable). If only a
4 portion or portions of the information warrants protection, the Producing Party, to
5 the extent practicable, will identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an
7 inadvertent failure to designate qualified information or items does not, standing
8 alone, waive the Designating Party’s right to secure protection under this Order for
9 such material. Upon timely correction of a designation, the Receiving Party must
10 make reasonable efforts to assure that the material is treated in accordance with the
11 provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge
14 a designation of confidentiality at any time that is consistent with the Court’s
15 Scheduling Order.

16 6.2 Meet and Confer. The Challenging Party will initiate the dispute
17 resolution process (and, if necessary, file a discovery motion) under Local
18 Rule 37.1, *et seq.*

19 6.3 The burden of persuasion in any such challenge proceeding will
20 be on the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties will
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party’s designation until the Court rules on the
26 challenge.

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles. A Receiving Party may use Protected Material

1 that is disclosed or produced by another Party or by a Non-Party in connection with
2 this Action only for prosecuting, defending, or attempting to settle this Action. Such
3 Protected Material may be disclosed only to the categories of persons and under the
4 conditions described in this Order. When the Action has been terminated,
5 a Receiving Party must comply with the provisions of section 13 below (FINAL
6 DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at
8 a location and in a secure manner that ensures that access is limited to the persons
9 authorized under this Order.

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
11 otherwise ordered by the court or permitted in writing by the Designating Party,
12 a Receiving Party may disclose any information or item designated
13 “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this
15 Action, as well as employees of said Outside Counsel of Record to whom it is
16 reasonably necessary to disclose the information for this Action;

17 (b) the officers, directors, and employees (including House
18 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
19 Action;

20 (c) Experts (as defined in this Order) of the Receiving Party to
21 whom disclosure is reasonably necessary for this Action and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the Court and its personnel;

24 (e) court reporters and their staff;

25 (f) professional jury or trial consultants, mock jurors, and
26 Professional Vendors to whom disclosure is reasonably necessary for this Action
27 and who have signed the “Acknowledgment and Agreement to Be Bound”
28 (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

16 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or
17 Items. Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item
19 designated “ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (c) the Court and its personnel;

27 (d) court reporters and their staff;

28 (e) the author or recipient of a document containing the

1 information or a custodian or other person who otherwise possessed or knew the
2 information;

3 (f) any mediator or settlement officer, and their supporting
4 personnel, mutually agreed upon by any of the parties engaged in settlement
5 discussions.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
7 PRODUCED IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” that Party must:

11 (a) promptly notify in writing the Designating Party. Such
12 notification will include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or
14 order to issue in the other litigation that some or all of the material covered by the
15 subpoena or order is subject to this Protective Order. Such notification will include a
16 copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order will not produce any information designated in this
21 action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a
22 determination by the court from which the subpoena or order issued, unless the
23 Party has obtained the Designating Party’s permission. The Designating Party will
24 bear the burden and expense of seeking protection in that court of its confidential
25 material and nothing in these provisions should be construed as authorizing or
26 encouraging a Receiving Party in this Action to disobey a lawful directive from
27 another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in this Action and designated as “CONFIDENTIAL” or
5 “ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in
6 connection with this litigation is protected by the remedies and relief provided by
7 this Order. Nothing in these provisions should be construed as prohibiting a Non-
8 Party from seeking additional protections.

21 (c) If the Non-Party fails to seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the Receiving
23 Party may produce the Non-Party's confidential information responsive to the
24 discovery request. If the Non-Party timely seeks a protective order, the Receiving
25 Party will not produce any information in its possession or control that is subject to
26 the confidentiality agreement with the Non-Party before a determination by the
27 court. Absent a court order to the contrary, the Non-Party will bear the burden and
28 expense of seeking protection in this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
11 OTHERWISE PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
16 procedure may be established in an e-discovery order that provides for production
17 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
18 (e), insofar as the parties reach an agreement on the effect of disclosure of
19 a communication or information covered by the attorney-client privilege or work
20 product protection, the parties may incorporate their agreement in the stipulated
21 protective order submitted to the court.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right
24 of any person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of
26 this Protective Order no Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in this
28 Stipulated Protective Order. Similarly, no Party waives any right to object on any

1 ground to use in evidence of any of the material covered by this Protective Order.

2 12.3 Filing Protected Material. A Party that seeks to file under seal
3 any Protected Material must comply with Civil Local Rule 79-5. Protected Material
4 may only be filed under seal pursuant to a court order authorizing the sealing of the
5 specific Protected Material at issue. If a Party's request to file Protected Material
6 under seal is denied by the court, then the Receiving Party may file the information
7 in the public record unless otherwise instructed by the court.

8 13. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in paragraph 4, within 60
10 days of a written request by the Designating Party, each Receiving Party must return
11 all Protected Material to the Producing Party or destroy such material. As used in
12 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
13 summaries, and any other format reproducing or capturing any of the Protected
14 Material. Whether the Protected Material is returned or destroyed, the Receiving
15 Party must submit a written certification to the Producing Party (and, if not the same
16 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
17 (by category, where appropriate) all the Protected Material that was returned or
18 destroyed and (2) affirms that the Receiving Party has not retained any copies,
19 abstracts, compilations, summaries or any other format reproducing or capturing any
20 of the Protected Material. Notwithstanding this provision, Counsel are entitled to 13
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
23 reports, attorney work product, and consultant and expert work product, even if such
24 materials contain Protected Material. Any such archival copies that contain or
25 constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 4 (DURATION).

27 Any willful violation of this Order may be punished by civil or criminal
28 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary

1 authorities, or other appropriate action at the discretion of the Court.

2

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4

5 *Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other*
6 *signatories listed concur in the filing's content and have authorized this filing.*

7

8 DATED: December 2, 2019 Mortgage Recovery Law Group LLP

9

By: /s/ Paul A. Levin
Paul A. Levin
Attorneys for Plaintiffs

12

DATED: December 2, 2019 Etan Mark
Donald J. Hayden
Mark Migdal & Hayden

15

By: /s/ Etan Mark
Etan Mark
Attorneys for Plaintiffs

18

DATED: December 2, 2019 Jason Jones, Attorney at Law

19

By: /s/ Jason Jones
Jason Jones
Attorneys for Plaintiffs

22

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1 DATED: December 2, 2019

Mark T. Drooks
Paul S. Chan
Gopi K. Panchapakesan
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Lincenberg & Rhow, P.C.

5 By: /s/ Mark T. Drooks

6 Mark T. Drooks
7 Attorneys for Defendant Herbalife
8 International of America, Inc.
9

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

12 DATED: December 2, 2019

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15 HON. MICHAEL R. WILNER
16 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
[full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States
District Court for the Central District of California on [date] in the case of [insert
case name and number]. I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of contempt.
I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [full name] of
_____ [full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

21 | Date: _____

23 | City and State where signed:

25 Printed Name:

27 || Signature: